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Report of the Special Rapporteur on the right to education, Kishore Singh

Protecting the right to education against commercialization*

Summary

The present report is submitted pursuant to Human Rights Council resolutions 17/3, 23/4 and 26/27. The Special Rapporteur looks with concern at the rapid increase in the number of private education providers and the resulting commercialization of education, and examines the negative effects of this on the norms and principles underlying the legal framework of the right to education as established by international human rights treaties. He highlights the repercussions of privatization on the principles of social justice and equity and analyses education laws as well as evolving jurisprudence related to privatization in education. Finally, he offers a set of recommendations on developing effective regulatory frameworks for controlling private providers of education and safeguarding education as a public good.

* Late submission.

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I. Introduction

1. During the past decade there has been a rapid increase in the number of private providers of education in many developing countries, with many schools and educational establishments not being registered and being funded and managed by individual proprietors or enterprises. Such providers are distinct from other non-State actors, such as religious institutions, non-governmental organizations (NGOs), community-based groups, foundations and trusts. As a result, education is being commercialized and for-profit education is flourishing as an attractive business, with scant control by pubic authorities. In the present report, the Special Rapporteur looks at the rapid growth in private providers, which is resulting in the commercialization of education, and examines the negative effects of such commercialization on the norms and principles and legal frameworks underlying the right to education as established by international human rights treaties. He also highlights the repercussions of privatization on the principles of social justice and equity, underlining the need for safeguarding education as a public good.

2. Building upon his 2014 report to the General Assembly (A/69/402), the Special Rapporteur analyses education laws and evolving jurisprudence related to privatization. Finally, he offers a set of recommendations for developing effective regulatory frameworks for controlling private providers in education, in keeping with State obligations on the right to education as laid down in international human rights conventions.

II. Recent activities carried out by the Special Rapporteur

3. During the reporting period, the Special Rapporteur undertook missions to Algeria and Bhutan. In his 2014 report to the General Assembly, he wrote about the negative impact of private providers on the norms and principles of education, the underlying legal framework of the right to education and the importance of preserving education as a public good.

4. Since his last report, the Special Rapporteur has participated in a number of public events on education and continued collaborating with States, international organizations and NGOs.

5. On 16 and 17 April 2014, he was a panellist at the briefing for delegates on the post-2015 development agenda organized by the United Nations Institute for Training and Research (UNITAR) in New York, where he spoke on education.

6. On 6 May, he gave the opening address at a colloquium on lifelong learning organized by the education faculty of Mohammed V University in Rabat.

7. From 12 to 14 May, in Muscat, he participated in a meeting entitled "Education for all and the post-2015 development agenda", organized by the United Nations Educational, Social and Cultural Organization (UNESCO) in cooperation with the Government of Oman. During the ministerial and leaders' session, he highlighted key issues and challenges.

8. On 14 May, he participated in a briefing for delegates on the post-2015 development agenda organized by UNITAR in Geneva. As a panellist, he talked about education and participated in a dialogue with participating delegates.

9. On 16 May, he addressed the opening of the event on global citizenship education entitled "Enabling conditions/perspectives", co-organized by UNESCO and the Permanent Delegation of Austria to UNESCO.

10. On 11 June, he participated in a side event hosted by the International Organization for the Right to Education and Freedom of Education on his report to the Human Rights Council.

11. On 12 June, he spoke at a side event on privatization in education, hosted by Portugal and the Global Initiative for Economic, Social and Cultural Rights, and attended an expert meeting.

12. On 17 June, on the occasion of the twenty-sixth session of the Human Rights Council, he participated in a panel discussion on the right to education and skills development, hosted by the Permanent Missions of Portugal and Qatar.

13. On 20 June, he attended a side event hosted by Tunisia on the resolution related to the repatriation of funds of illicit origin.

14. On 7 July, he participated as a keynote speaker in a day-long discussion organized by the Committee on the Elimination of Discrimination against Women on the drafting of a general recommendation on the right of women and girls to education.

15. On 12 July, he addressed the fifty-sixth session of the Conference of Ministers of Education of the Francophonie, held in Abidjan on the theme of inclusive quality education for all in Francophonie and on related challenges, priorities and perspectives.

16. On 25 July, he was a panellist in a round table on freedom and democracy without violence, and made concluding remarks at the session on the philosophical foundations of human rights, organized by the Collège Universitaire Henry Dunant in Geneva.

17. On 25 August, he gave a lecture on the post-2015 development agenda and the right to education at the Faculty of Legal Studies, South Asian University, New Delhi.

18. On 26 August, he addressed officials of various States of India during an orientation workshop on the Right to Education Act of India at the National University for Educational Planning in New Delhi.

19. On 2 September, he gave a special lecture at the Indian Society of International Law in New Delhi entitled "The right to education as a human right: challenges and prospects for India".

20. On 21 October, he participated in a side event in New York hosted by Transparency International and Penal Reform International on corruption and its impact on human rights.

21. On 28 October, he was invited by the Open Society Foundation to speak on his report to the General Assembly on privatization and the right to education.

22. From 4 to 6 November, he participated in the 2014 World Innovation Summit in Education, held in Doha on the theme "Imagine-create-learn: creativity at the heart of education".

23. From 10 to 12 November, he attended the World Conference on Education for Sustainable Development, held in Aichi-Nagoya, Japan, where he was a panellist at a plenary session.

24. On 20 November, he gave the inaugural address at a meeting on service learning organized by the University of Rioja, Spain.

25. On 25 November, he gave a lecture at Queens University in Belfast entitled "State responsibility for provision of quality education to every child".

26. From 28 to 30 November, he attended the World Human Rights Forum in Marrakech, Morocco, where he interacted with a large number of civil society

organizations. In the address he gave during the closing ceremony, he focused on the right to education.

27. On 16 December, he addressed the issue of quality education at the 2014 International Conference of Non-Governmental Organizations, which was devoted to the post-2015 development agenda and was hosted by UNESCO in Paris.

28. From 9 to 11 January 2015, he co-chaired a plenary session on the implementation of international law held in the context of the World Congress on International Law. The session was organized by the Indian Society of International Law in New Delhi.

29. On 15 January, he was a lead speaker at an event in New Delhi organized by the Right to Education Forum in cooperation with UNESCO in connection with his 2014 report to the General Assembly.

30. On 23 February, he spoke at the opening session of the World Assembly of the Global Campaign for Education, held in Johannesburg, South Africa, at which he underlined the need to safeguard education against the forces of privatization. Participants in the World Assembly aligned themselves fully with the recommendations made in his 2014 report to the General Assembly.

31. On 18 March, he participated in a round table on the theme "Privatization, education and social justice", held at the Institute of Political Sciences in Paris to examine issues in privatization in education. He also gave a public lecture entitled "Privatization in education: a new challenge for human rights in developing countries".

32. On 20 March, he was a panellist in an event on the implementation of economic and social rights and State obligations under human rights conventions organized by the Permanent Mission of Fiji to the United Nations Office at Geneva, and spoke on challenges of effective realization of the right to education and its interface with right to development.

33. On 26 March, he gave a keynote address focusing on preserving education as a public good in the face of privatization at a session on the right to quality education and the post-2015 development agenda, organized on the occasion of the World Social Forum in Tunis.

34. On 15 April, he delivered a statement at the opening of the general discussion on the right to education of persons with disabilities, organized in Geneva by the Committee on the Rights of the Persons with Disabilities, with a view to formulating a general comment on article 24 (right to education) of the Convention on the Rights of the Persons with Disabilities.

35. On 22 April, he gave a lecture at Cornell Law School on the negative effects of privatization in education, highlighting State obligations and the need to preserve education as a public good.

III. Commercialization of education and its unfettered proliferation

36. A recent in-depth study on privatization has shown that education as a sector is increasingly being opened up to profit-making and trade, and to agenda-setting by private, commercial interests that conceptualize the learner as a consumer and education as a

consumer good.[1] The reconfiguration of public services within neoliberal globalization has placed education squarely in the headlamps of the private sector[2] and international trade agreements such as the General Agreement on Trade in Services and the Trade in Services Agreement.[3] Low-fee private schools in developing countries are a glaring example of the commercialization of education, characterized as "edu-business".[4] A potentially very large proportion of these schools are unregistered.[5]

37. These developments have their genesis in the education sector strategies of the World Bank, which have stressed since the 1980s the key role of the private sector in education and compelled developing countries to initiate significant cuts under structural adjustments to their public services, including education. The most recent World Bank education strategy, the education sector strategy 2020 (released in 2011), gives increased prominence to private-sector engagement in education; as does the Global Partnership for Education.[6]

38. Promoting for-profit education, the International Finance Corporation considers laws as financial hurdles and provides guidance to private providers of education to be "very profitable and flourishing enterprises".[7] This is blatantly disrespectful of the human rights obligations of international bodies, including the World Bank, as described in general comment No. 13 (1999) on the right to education of the Committee on Economic, Social and Cultural Rights.

39. The commercialization of education and its unfettered liberalization, open to operators for lucrative purposes or objectives, is contrary to international human rights law. The introduction of private, for-profit education into the national education landscape has a number of serious repercussions.[8] Privatization leads to shrinking public investment. Its negative effects on education must receive foremost consideration in public policies, bearing in mind that education is a social good.

IV. Widespread concern with the baleful effects of privatization in education

40. A number of scholars have critically examined the neoliberal model of schooling, which is characterized by "State withdrawal in favour of privatization" and "market-

[1] Ian Macpherson, Susan Robertson and Geoffrey Walford, eds., *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia* (Oxford, Symposium Books Limited, 2014).

[2] See concept note for the Commonwealth Ministerial Working Group on the Post-2015 Development Framework for Education (2013).

[3] See Education International, "Education is not a commodity", 6 May 2015. Available from http://ei-ie.org/en/news/news_details/3517.

[4] See Geetha B. Nambissan, "Private schools for the poor: business as usual?", *Economic & Political Weekly*, 13 October 2012, vol. xlvii, No. 41, p. 51.

[5] Laura Day Ashley et al., "The role and impact of private schools in developing countries" (United Kingdom of Great Britain and Northern Ireland, Department of International Development, 2014) p. 18.

[6] **Error! Hyperlink reference not valid.**

[7] See *Education investment guide: a guide for investors in private education in emerging markets* (2010). Available from http://documents.worldbank.org/curated/en/2010/07/18806919/education-investment-guide-guide-investors-private-education-emerging-markets.

[8] See http://blogs.ft.com/beyond-brics/2014/12/17/for-profit-school-chains-educate-africas-poor/.

anchored conceptions of schooling" — a departure from decades of the welfare state.[9] The work of numerous civil society organizations expressing concern about the negative effects of privatization in education must be commended.[10]

41. UNESCO and the International Organization of la Francophonie have expressed concern with sweeping privatization in education reducing education to a commodity: "With diversification in the field of education, the private providers — international or local — are more and more numerous. International consortiums have [become] specialized in 'selling' education. A number of local figures, including many teachers and even educational authorities, are creating schools for profit, turning to rather wealthy families with slogans extolling the quality [of the school] or are turning towards the disadvantaged public with altruistic slogans, which often hide the profit or political character of their endeavours. One can observe, above all, the emergence of a quasi-market phenomenon".[11]

42. Private providers undermine the right to education, both as an entitlement and as empowerment.

A. Privatization and the right to education as an entitlement

43. Entitlement to education in terms of universal access is an essential prerequisite for the exercise of the right to education. However, privatization breeds exclusion, as those who are disadvantaged are unable to access private schools. This aggravates existing disparities in access to education, further marginalizing the poor. Furthermore, voucher schemes purported to provide economically disadvantaged parents with the means to select a private school in fact promote group differentiation.[12]

44. Often, the criterion for admission to private institutions is not merit or capacity, but rather the ability to pay. This is in contravention of the basic norms set out in the Universal Declaration of Human Rights and the international human rights conventions.

B. Privatization and the right to education as empowerment

45. Advertising that portrays private schools as providers of better-quality education lures ill-informed students and parents. The phenomenon of low-fee private schools is projected as an affordable means of obtaining quality education. However, there is no evidence that "private schools do anything different to induce more learning than do public

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[9] See J. Zajda, ed., *Decentralization and Privatization in Education: the Role of the State* (Dordrecht, Springer, 2006).

[10] See report on Privatisation in Education, organized by the Global Initiative for Economic, Social and Cultural Rights, together with the Privatisation in Education Research Initiative on the occasion of the twenty-sixth session of the Human Rights Council, June 2014; www.ei-ie.org/en/news/news_details/3306; interventions at the Global Campaign for Education World Assembly, Johannesburg, 23–27 February 2015; www.opensocietyfoundations.org/events/un-special-rapporteur-kishore-singh-privatization-education; http://globalinitiative-escr.org/advocates-from-91-countries-call-on-governments-to-stop-education-profiteers/.

[11] "La régulation du système éducatif: une obligation pour atteindre l'équité et améliorer la qualité", paper prepared by the International Institute for Educational Planning of UNESCO, the International Organization of la Francophonie, Wallonie Bruxelles, 2014, p. 7.

[12] Ian Macpherson, "Interrogating the private-school 'promise' of low-fee private schools" in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Ian Macpherson, Susan Robertson and Geoffrey Walford, eds. (Oxford., Symposium Books, 2014), p. 21.

schools ... many private schools do worse than public schools".[13] Quality is also compromised by the high prevalence of underqualified teachers or instructors employed, on a temporary basis, in private schools run by small and large enterprises. This is in direct contravention with the UNESCO-International Labour Organization recommendation on status of teachers, which lays down a normative framework for the teaching profession and applies to teachers of both public and private schools.

46. According to the Organization for Economic Cooperation and Development (OECD), "public schools with comparable student populations offer the same advantages" as private schools.[14] These schools take credit for academic success, yet having educated wealthy parents is the most determining factor in such success.[15] Generally, private schools are chosen owing to the lack or poor quality of public schools.

V. Internationai legal framework for the right to education

47. The State is primarily responsible for respecting, fulfilling and protecting the right to education. The liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions and the liberty of individuals and bodies to establish and direct educational institutions provided for in article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights is not unfettered. Such freedom in education is subject to compliance with minimum standards in education, to which all private educational institutions are required to conform.[16] The failure to ensure that private educational institutions conform to the minimum educational standards required in articles 13 (3) and (4) constitutes a violation of the right to education.[17]

48. The UNESCO Convention against Discrimination in Education contains similar provisions. It provides that the objective of the establishment or maintenance of private educational institutions should not be to secure the exclusion of any group, but "to provide educational facilities in addition to those provided by the public authorities" and that "the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level".

49. Education is not a privilege of the rich and well-to-do, it is an inalienable right of every person. The State is both guarantor and regulator of education. The provision of basic education, free of cost, is not only a core obligation of States, it is also a moral imperative.

50. The Special Rapporteur considers it essential, when looking at privatization in education, to bear in mind State obligations in respect of the right to education: States must ensure promote, respect and fulfil the right to education.[18]

51. State responsibility for providing basic education free of charge is established in human rights law. According to the interpretation of the Committee on Economic, Social and Cultural Rights, under article 13 of the Covenant, States are regarded as having

[13] See Zajda, *Decentralization and Privatization*, pp. 9 and 10.

[14] OECD, "Private schools: Who benefits?", in *PISA in Focus 7*. Available from www.oecd.org/pisa/pisaproducts/pisainfocus/48482894.pdf.

[15] Available from www.statcan.gc.ca/daily-quotidien/150331/dq150331d-eng.htm. See also Global Monitoring Report p. 216.

[16] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 54.

[17] Ibid., para. 59.

[18] The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide (Committee on Economic, Social and Cultural Rights, general comment No. 13, paras. 46 and 47).

principal responsibility for the direct provision of education in most circumstances: States parties to the Covenant recommend, for example, that the "development of a system of schools at all levels shall be actively pursued".[19] States have an "unequivocal obligation" to provide primary education free of charge to all, with a detailed plan of action to progressively improve provision, under article 14 of the Covenant.[20] The Committee has stressed that, under article 13, States are regarded as having principal responsibility for the direct provision of education in most circumstances.[21]

52. According to a report by the United Nations Children's Fund (UNICEF), "only the State ... can pull together all the components into a coherent but flexible education system".[22] Any State in which a significant number of individuals are deprived of the most basic form of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être.[23]

53. It is an established principle of human rights law that the State remains responsible for its obligations, even when they are privatized. The European Court of Human Rights has held that, under the European Convention on Human Rights, a State cannot absolve itself from responsibility by delegating its obligations to private school bodies.[24] This position is reinforced by the Guiding Principles on Business and Human Rights, which emphasize that when States delegate their responsibilities to businesses, they remain responsible for ensuring that their human rights obligations are being met by those companies.

54. The State remains primarily responsible for education on account of international legal obligations and cannot divest itself of its core public service functions. As the Supreme Court of the United States of America stated in the historic judgement in *Brown v. Board of Education* (1954), "providing public schools ranks at the very apex of the function of a State" and "education is perhaps the most important function of State and local governments".[25]

55. Yet, instead of controlling the growth of privatized, for-profit education, Governments often support private providers through subsidies and tax incentives, thus divesting themselves of their primary public function. As a result, rather than supplementing government efforts, private providers are supplanting public education and commercializing education in the process.

VI. Negative impacts of privatization on fundamental principles and norms underpinning the right to education

56. Privatization of education, where it has a negative impact, violates many of the legal and moral norms upon which the right to education is established.

[19] Ibid., para. 48 citing art. 13 (2) (e).

[20] Committee on Economic, Social and Cultural Rights, general comment No. 13, para. 9.

[21] Ibid., para. 48.

[22] UNICEF, *The State of the World's Children — Education* (New York, 1999), p. 63.

[23] See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of State parties' obligations, para. 10.

[24] *Costello-Roberts v. the United Kingdom*, judgement of 25 March 1993, paras. 27 and 28.

[25] *Wisconsin v. Yoder*, 406 U.S.205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972), as cited "Students Rights", in *Education Law*, Charles J. Russo and Ralph D. Mawdsley, eds., Education Series (New York, Law Journal Press, 2002).

A. Non-discrimination

57. Discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is prohibited in international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)). Private providers do not respect the prohibited grounds of discrimination and violate fundamental principles of non-discrimination in human rights law: social origin, economic condition, birth or property are the preponderant factors in allowing access to private schools. It is the obligation of States to ensure the right to education without discrimination or exclusion. Privatization in education also has repercussions on girls' right to education, as families prioritize the education of boys over girls. Any scheme of "vouchers purported to provide economically disadvantaged parents the means to select a private school in fact promotes group differentiation".[26]

B. Equality of opportunity in education

58. Privatization widens disparities in access to education. Private providers disregard the fundamental principle of equality of opportunity in education common to almost all international human rights treaties (A/HRC/17/29 and Corr.1). Inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with economic condition, wealth or property becoming the most important criterion in access to education.

59. States have obligations to ensure that the liberty of providing education set out in article 13 (4) of the International Covenant on Economic, Social and Cultural Rights does not lead to extreme disparities of educational opportunity for some groups in society.[27] Pursuant to Human Rights Council resolution 17/3, they should give full effect to the right to education by, inter alia, promoting equality of opportunity in education in accordance with their human rights obligations.

C. Social justice and equity

60. Education is instrumental in "promoting development, social justice and other human rights".[28] Privatization stymies the principle of social justice, which is at the core of the global mission of the United Nations to promote development and human dignity. Low-fee private schools "not only constrain social justice in education, favouring access for some over others, but also social justice through education" as their raison d'être is "monetizing access" to education. This aggravates inequality through the structural exclusion of certain groups, entrenching a neoliberal vision of society.[29]

61. In the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want" (General Assembly resolution 66/288, annex), the General Assembly underlined the importance of the right to quality education and expressed the resolve of the international community to work for a world that is just,

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[26] Macpherson, "Interrogating the private-school 'promise'", p. 21.

[27] See Committee on Economic, Social and Cultural Rights, general comment No. 13 on the right to education, para. 30.

[28] See Transparency International, *Global Corruption Report: Education* (Abingdon, Oxon, Routledge, 2013). See also Jacques Hallak and Muriel Poisson, "Corrupt schools, corrupt universities: what can be done?" (International Institute for Educational Planning, UNESCO Publishing, 2007).

[29] Macpherson, "Interrogating the private-school 'promise'", p. 296.

equitable and inclusive. The Special Rapporteur finds it difficult to reconcile this vision with the social implications of privatizing education. Unless social policy becomes transformative in a spirit of (re)distributive justice, progress towards development goals is at risk and violent conflict may result.[30]

D. Preserving and strengthening education as a public good

62. Privatization adversely affects education as it "recast[s] education not as a public or societal good grounded in democratic principles of justice and equal opportunity but as an individual, atomized and personalized private good".[31] Private, for-profit schools disregard basic norms and standards and undermine education as a societal good.

63. The Special Rapporteur has consistently underlined the importance of preserving education as a public good, while promoting the view that the State is the custodian of quality education as a public good. Understanding the multifaceted role of the State in education is a precondition for critically analysing educational institutions and their responsibility for preserving and strengthening education as a public good.[32]

64. Safeguarding education as a public good should be an overriding concern in considering recommendations and analyses presented in the report of the Intergovernmental Committee of Experts on Sustainable Development Financing submitted to the General Assembly at its sixty-ninth session (A/69/315).

VII. Differentiated public policy responses towards non-State providers of education

65. Alternative schools for linguistic, cultural or religious reasons in line with article 13 of the International Covenant on Economic, Social and Cultural Rights have a recognized place in education systems and are important in maintaining diversity and protecting minorities within countries.

66. There are other important avenues for meeting demands in education while a State pursues the progressive realization of the right to education. Not-for-profit, NGO, community and religious schools all have different motivations, dynamics and outcomes. Governments can, as in Brazil, categorize various non-State providers in education. In Spain, contractual arrangements[33] between a region and a private school establish mutual rights and obligations. Public support to such educational establishments must, as provided in the Constitution of Cabo Verde, for example, be subject to pursuing the public interest.

67. Public policies can help communities and NGOs to establish schools. Community schools can play a meaningful complementary role in the realization of the right to education. Such schools may be sources of innovation, leading to new teaching methods, curricula or school management practices that can improve the public system. As in the

[30] Esuna Dugarova and Tom Lavers, "Social inclusion and the post-2015 sustainable development agenda", paper prepared for UNITAR briefing for delegates on the post-2015 development agenda and social inclusion (United Nations Research Institute for Social Development, April 2014), pp. 2 and 3.

[31] Macpherson, "Interrogating the private-school 'promise'", p. 295.

[32] See Zajda, *Decentralization and Privatization*, introduction.

[33] Spain, Organic Law 8/2013 for the improvement of quality of education.

case of the Bodh Shiksha community schools in India,[54] they can also be integrated into public schools. Ensuring quality in education is important in efforts to ensure "socialized" education, as in Viet Nam, where efforts are made to increase financial and other forms of support to schools in the community. Collaborations looking to pursue the social interest in education can lead to public education systems being reinforced.[55]

68. Moreover, educational establishments set up for philanthropic purposes, which are not profit-driven but promote education as a societal good, are valuable for generating social support for education. Public policies can promote the foundation of public utilities devoted to the cause of education. Corporate social responsibility can support education development and must be fully harnessed. All those valuing education as a public good and a social cause as opposed to for-profit schools can be encouraged by an enabling environment and good governance for developing education, in such innovative ways as special trust funds created for the purpose of maximizing national investment in education.

VIII. Private providers and national legislation

69. States remain primarily responsible for protecting the right to education. Many countries have national legislation with provisions applicable to non-State providers of education. In most cases, it is broadly conceived, covering freedom for religious and moral education in accordance with article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights and other international human rights conventions. Except in a few cases, such provisions do not cover privatization in all its manifestations and do not adequately address issues specifically related to the commercialization of education. Laws on private providers exist in only a few countries.

70. With little or no effective control, the negative effects of privatization on the right to education in several countries can already be seen. For example, a phenomenal increase in low-cost private schools in Pakistan, which now enrol over 40 per cent of all students, has exacerbated inequities at all school levels, thereby heightening instabilities and violence in conflict-affected provinces.[56] In Nepal, private providers, who can register as companies and sell education services, continue to flout government guidelines.[57] The growth of fee-paying, for-profit schools in Morocco is creating a system that privileges those with means, with the risk of developing a two-speed education system.[58] In South Africa, where private schools have become increasingly popular among the middle classes,[59] the national human

[54] See Coalition for Community Schools, "Community Schools: Partnerships for Excellence". Available from www.communityschools.org/assets/1/Page/partnershipsforexcellence.pdf. See also www.bodh.org/stakeholder-development.php.

[55] See Ta Van Tuan and Duong Thi Viet An, *Socialization Policy and Access of the Rural Poor to Education in Vietnam*. Available from www.periglobal.org/role-state/document/socialization-policy-and-access-rural-poor-education-vietnam.

[56] See Irfan Muzaffar, Campaign for Quality Education in Pakistan, "World Bank funded private schools in Pakistan undermining equity?", 2 December 2013.

[57] See Chandra Sharma Poudyal, "Nepali private schools and tolerated illegality", *Setopati*. Available from http://setopati.net/opinion/1792/. See also the parallel report submitted for the universal periodic review of Nepal by National Campaign for Education-Nepal, the Global Initiative for Economic, Social and Cultural Rights, the Sciences Po law school Clinic, and partners. Available from http://bit.ly/1Gke0dn.

[58] See Global Initiative for Economic, Social and Cultural Rights, Morocco, "Privatisation in education in Morocco and the right to education: summary factsheet". Available from http://goo.gl/MTGua8.

[59] See www.news24.com/SouthAfrica/News/Curro-race-row-sparks-probe-at-private-schools-20150203.

rights commission recently launched investigations into the for-profit Curro Foundation School.[40]

71. Omega International, a chain of for-profit, low-fee private schools run according to a business model[41] in Ghana, requires fees representing up to 40 per cent of poor households' income[42] and makes a mockery of education by not following the national curriculum[43] and by employing unqualified instructors.[44] The Special Rapporteur notes that providing tax relief or subsidies to private schools, rather than establishing good-quality public ones, violates the Constitution of Ghana, which provides that every person shall have the right, at his own expense, to establish and maintain a private school or schools.

72. Like Ghana, Kenya and Uganda too are allowing education to be commercialized and are encouraging for-profit schools, such as the Bridge International Academies. This violates these States' international legal obligations to provide free basic education for all. It also contravenes the Children Act 2001 of Kenya (reinforced by the Basic Education Act 2013), by which every child is entitled to free basic education and the Government is responsible for providing such education.

73. Chile has embarked on a transformative, regulatory approach to undoing the devastating impact of 30 years of market-based policies in education, which have led to high levels of school segregation and stratification.[45] The Special Rapporteur hopes the current reforms will dismantle the underlying neoliberal economic policies and restore education as a public service through new, socially just and equity-focused legislation.[46] He also hopes that the negative consequences of privatization in Chile will dissuade countries such as Peru from following that path. Nearly 25 per cent of Peruvian schools are private and, rather than protecting the public interest in education, Peru has issued legislative decree No. 882, which leaves it to the national consumer protection agency to regulate private schools.

74. In Sweden, the Government launched a major review to abolish the motivation of profit for providing education after falling in the Programme for International Student Assessment league tables and intends to bring in legislation by 2016 that would force private companies to reinvest all profits back into their schools. "The Swedish free school experiment shows that allowing for-profit providers into the school market has not led to increased performance and improved schools, but instead permitted another vested interest into education".[47]

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[40] See http://pod702.co.za/Eyewitnessnews/docs/150519GDECurroReport.pdf.

[41] See www.periglobal.org/subject/for-profit-schools.

[42] See Curtis Reip, "Omega Schools Franchise in Ghana: "affordable" private education for the poor or for-profiteering?" in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Macpherson et al., eds., pp. 259–278.

[43] See http://globalinitiative-escr.org/wp-content/uploads/2014/08/260814-Education-Privatization-in-Ghana-CRC-pre-session-report_FINAL.pdf.

[44] See ibid.

[45] See "Decommodifying Education in Chile", 2014. Available from www.educationincrisis.net/blog/item/1122-decommodifying-education-in-chile?-bachelets-reforms-in-the-face-of-persistent-educational-inequalities.

[46] See "Sweeping reforms set to end for-profit education in Chile", 20 May 2014. Available from http://theconversation.com/sweeping-reforms-set-to-end-for-profit-education-in-chile-26406.

[47] See Richard Vaughan, "No return for Sweden's free schools", *TES Magazine*, 24 October 2014. Available from https://www.tes.co.uk/article.aspx?storyCode=6447747.

75. As has been done in law in some countries,[48] conditions under which private schools can operate must be fixed by the State. In the Netherlands, for-profit, privately funded schools, rather than private schools established for a specific religion, philosophy or educational ethos, must meet the conditions laid down and obtain approval from the education inspectorate if they wish to provide education to students of compulsory school age.

A. Education as a public good

76. The concept of education as a public good can wield greater force when enshrined in the national legal system. National legislation in several countries embodies this concept, and must become more common. For example, the Constitution of Ecuador, which ushered in a new human rights-based model for the State (see A/HRC/WG.6/13/ECU/1, para. 4), establishes that education shall respond to the public interest and will not be subservient to individual or corporate interests.

77. Similarly, the Act on National Education of 2006 in Argentina provides that education and knowledge are public goods guaranteed by the State and that private management will be based on objective criteria of social justice. The law in the Dominican Republic stipulates that the State must primarily promote education as a "common good".[49] In some countries, private education is required to be a service of "public utility",[50] which thus forbids for-profit education. The concept of education as a social good is also reflected in the Constitution of Brazil.

B. Abolishing for-profit education

78. For-profit education is contrary to the concept of education as a public good, and the Special Rapporteur would like to mention national legislation in several countries that outlaws for-profit schools. For example, the Education Act of the Bahamas[51] establishes that "the school shall not be established or maintained for the private profit of any person or persons". In Qatar, private schools are required to be authorized by the Supreme Education Council and "shall not be profit-oriented".[52] The Education Law of China provides that "educational activities must conform with the public interest of the State and society"[53] and that "no organization or individual may operate a school or any other type of educational institution for profit".[54] National legislation and policies in Finland give paramount importance to education as a public function of the State and as a public good. The law in Finland states that "basic education may not be provided in pursuit of financial gain".[55]

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[48] For example, Law No. 2004/022 (2004) of Cameroon (art. 5); the Angolan Education Law of 31 December 2001, Law No. 1/19 of Burundi (art. 4).

[49] Organic Law of Education No. 66 of 1997 (art. 7).

[50] Constitution of Gabon (as revised in 2011) (art. 1, para. 19), the Framework Law No. 14/004 (2014) of the Democratic Republic of the Congo (art. 137), and Law No. 2004/022 (2004) of Cameroon (art. 2).

[51] See http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1962/1962-0015/EducationAct_1.pdf.

[52] Law No. 11 pertaining to independent schools (2006) (art. 2).

[53] See www.chinaeducenter.com/en/edulaw/law1.php.

[54] See www.chinaeducenter.com/en/edulaw/law3.php.

[55] Section 7 of the Basic Education Act 628/1998. See www.finlex.fi/en/laki/kaannokset/1998/en19980628.pdf.

79. For-profit education is illegal in some countries where the provision of basic education is a constitutional obligation, as in Brazil and South Africa. The Special Rapporteur would like to commend all those countries where for-profit education is forbidden and to appeal to all countries to abolish for-profit education. He considers that it is crucial to generalize this abolition in legislation and public policies, and to establish effective oversight mechanisms.

C. Regulating school fees

80. As many private providers seek to maximize the profits from education, rules and regulations to control school fees must be imposed. Otherwise, the economic accessibility of education for specific groups of the population is endangered.[56] Public authorities can establish maximum permissible fees to be charged by private providers, with a ban on raising those fees without prior approval. The Guidelines for Private Schools in Bhutan, for instance, require private schools to set and declare yearly lump-sum school fees for a student for one academic year. In Cameroon, the fees in private schools are fixed by the State under a contract, in consultation with providers of education.[57]

D. Minimum standards and human rights values

81. The commercialization of education necessarily involves the pursuit of material values to the detriment of the humanist mission of education. Private schools propagate a commercial value system and establish a learning system devoid of cultural diversity, as they cater to particular social strata. The "cultural-valuational currency" they breed is derogatory to the "moral worth" of the very poor.[58] Privatization eclipses a holistic approach to education: learning to know, learning to do, learning to live together and learning to be.[59]

82. The humanistic mission of education can be strengthened and supported through laws and policies. State policy in the sphere of education should be based on the humanistic nature of education, giving primacy to common human values and the public character of education, as is done in France and Greece, among other countries.

E. Some exemplary regulatory systems

83. In developing regulatory frameworks, States can draw upon existing regulatory systems and approaches. Algeria, for example, is noteworthy for controlling private educational establishments: such establishments are subject to prior authorization by the Minister of Education and the conditions of their creation and opening are controlled by strict rules. They are required to follow official programmes and bear civil responsibility towards students and the educational personnel employed. At the time of establishment, and each year thereafter, they must declare their sources of financing, including gifts and legacies, and cannot receive any financing grant or donations from national or foreign

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[56] See Fons Coomans and Antenor Hallo de Wolf, "Privatization of Education and the Right to Education", in *Privatisation and Human Rights in the Age of Globalisation*, Koen De Feyter and Felipe Gomez Isa, eds. (Antwerp – Oxford, Intersentia, 2005), pp. 239–240.

[57] Law No. 2004/022 (2004) of Cameroon (art. 21).

[58] Macpherson, "Interrogating the private-school 'promise'", p. 294.

[59] "Learning: the treasure within — report to UNESCO of the International Commission on Education for the Twenty-First Century" (UNESCO Publishing, 1996), pp. 20–21.

associations, institutions or organizations without prior approval by the Minister of Education. Finally, the regulations provide for sanctions in case of non-conformity to the rules by private educational establishments.[60]

84. In Japan, the School Education Act fixes minimum standards in education with curriculum guidelines, and the ordinance for the enforcement of the Act provides a basis for application of the guidelines. The country's Private Schools Act[61] lays down requirements for the establishment and management of private schools. Failure to follow specific regulations is punishable by sanctions of a civil nature.

85. Singapore is an especially noteworthy example of how States can effectively regulate private education providers with sanctions in cases of abusive practices. According to the country's Private Education Act, private educational establishments must be registered and abide by very strict quality standards and norms. They can be refused permission to operate if the private education institution is not in the public interest. The Act establishes duties and management accountabilities. It provides that "any registered private education institution which contravenes any requirement or restriction imposed ... shall be guilty of an offence" and makes acting "fraudulently or dishonestly" or "misleading" the public punishable by law.[62] The Act contains comprehensive provisions on inspection, enforcement and offences, as well as a detailed section on offences by corporate bodies, including unincorporated associations that, when found guilty of an offence, shall be liable to be prosecuted and punished accordingly.[63]

IX. Justiciability of the operations of private education providers

86. International and regional human rights monitoring mechanisms have noted that States have an obligation to protect individuals from human rights abuses committed by private parties. Public accountability of privatized schools and availability of remedies and recourse from their decisions should be specifically and unambiguously provided for by law. The regulatory role of the State is clearly within the scope of the obligation to protect.[64] Existing jurisprudence enables a better understanding of the obligations that the right to education imposes upon private providers.

87. A number of court rulings worldwide have established that private providers in education are accountable to the State and to the public. The Supreme Court of Nepal found that fees charged by private providers of education were increasing social and economic disparity. It ruled that the educational authorities had to devise reform programmes to regulate private schools: regulating fees, prohibiting the sale of unregistered and overpriced textbooks and limiting the number of private schools being accredited.[65]

88. In another case, the South African Constitutional Court found that the primary positive obligation with respect to the right to education rests on the State and that private

[60] Ordinance No. 05-07 of 23 August 2005.
[61] Available from www.japaneselawtranslation.go.jp/law/detail/?id=2301&vm=04&re=01.
[62] Private Education Act No. 21 (2009) of Singapore.
[63] Ibid.
[64] See Coomans and de Wolf, "Privatisation", p. 255.
[65] See Open Equal Free, "Nepali Private Schools banned from raising fees". Available from www.openequalfree.org/archives/ed-news/nepali-private-schools-banned-from-raising-fees.

actors providing basic education have an obligation not to infringe on the students' right to education.[66]

89. In a landmark decision, the Supreme Court of India ruled that when the Government grants recognition to private educational institutions, it creates an agency to fulfil its obligation to enable the citizens to enjoy the right to education: "Charging a capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution".[67]

90. The Constitutional Court of Colombia ruled in 1997 that excluding pupils from schools on an economic basis only violates their enjoyment of the right to education.[68] The Court also ruled that because of the fundamental character of the right to education, private schools are bound by specific constitutional obligations.[69]

91. Courts in the United States have also ruled that using public money to fund private school tuition vouchers is unconstitutional, and that public money being so used should instead go to public schools.[70]

92. Independent judicial systems and independent human rights mechanisms are necessary for ensuring that laws and regulations are enforced. It is also important that judges be well-versed in the international obligations of States on the right to education. Regulations on private providers should be widely publicized so as to make them better known, especially among parents, teachers and community members and organizations, and should allow for any entity or individual to initiate legal action in cases of abusive or illegal practices by private providers. Supporting public interest litigation safeguarding the right to education against forces of privatization is also important.

X. Regulatory framework for governing private providers, centred on education as a public good

93. The commercialization of education by all kinds of for-profit operators or with objectives contrary to international commitments by States and national values must be stopped and sanctioned. Corruption by private providers continues owing to a lack of regulations and monitoring, oversight and control mechanisms. As a result, the delivery of primary or basic education can be made a family business by running a school in a private house. Furthermore, few Governments have satisfactory regulations on tutoring by private tutorial companies. Regulations for such companies are also necessary.[71]

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[66] See *Governing Body of the Juma Musjid Primary School and Others v Essay N.O. and Others*, case CCT 29/10 (2011), especially para. 57.

[67] See *Miss Mohini Jain v. State Of Karnataka And Ors*, AIR 1858, 1992 SCR (3) 658.

[68] Judgement C-560/97, ruling on a constitutional challenge to article 203 (partial) of Law No. 115 of 1994.

[69] Colombian Constitutional Court, case T-211/95, 12 May 1995.

[70] Ruling by Louisiana Supreme Court, May 2013. See www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/07/louisiana-supreme-court-rules-school-voucher-funding-unconstitutional/.

[71] See Mark Bray and Ora Kwo, "Regulating Private Tutoring for Public Good: Policy Options for Supplementary Education in Asia" (Bangkok, UNESCO Asia and Pacific Regional Bureau for Education, 2013).

94. A regulatory framework for private providers is thus of critical importance in setting out responsibilities and accountability requirements.[72] The corporate sector has a long track record of attempting to prevent government regulation and numerous corporations have sued Governments for trying to implement regulations that could harm their profits. Governments must be bold in regulating private operators, focusing on education as a public good. Regulations must ensure that education is accessible to all, works towards the broader public interest and reflects a broad humanistic notion of education.

95. It should be mandatory for private providers to be transparent[73] and to share with parents, teachers and community associations information regarding school functioning, performance and management. A regulatory framework should clearly spell out the duties and responsibilities of private providers vis-à-vis the community, students, teachers and society at large.

96. The importance of a regulatory framework has been recognized by the United States Supreme Court: even in the case of traditional private education, individual States have the power to reasonably regulate all schools, to inspect, supervise and examine them, their teachers and pupils and to ensure that teachers are of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship are taught and that nothing is taught that is manifestly inimical to the public welfare.[74]

97. The Special Rapporteur would like to emphasize the need for States to create a comprehensive regulatory framework to control private providers in education and uproot commercialization in education. He considers that such a framework can be developed by developing regulations that prescriptive, prohibitory and punitive.

A. Prescriptive regulations

98. Prescriptive regulations relate to the establishment and operation of private schools, setting minimum standards, including conditions for their recognition and operations, curriculum requirements, minimum qualifications for teachers, infrastructure standards and quality measures, and recognition of degrees or diplomas issued.[75] These are basic requirements for any institution. Such regulations describe reporting obligations, including performance measures and financial reporting, and require compliance with monitoring and oversight agencies.

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[72] See Global Campaign for Education, intervention at the World Assembly, February 2015. See http://campaignforeducation.org/en/news/global/view/623-representatives-from-91-countries-come-together-for-the-fifth-gce-world-assembly.

[73] See Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

[74] See *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 US 510 (1925). See also Kemerer and Maloney, "The Legal Framework for Educational Privatization and Accountability" 150 *West's Education Law Reporter* (2001) No. 598, pp. 589-590.

[75] See "Plaidoyer sur l'importance du rôle sur l'Etat dans la regulation de la qualité et de l'équité de l'éducation" in "Régulation par l'Etat de la qualité et de l'équité de l'éducation", paper prepared by the International Organization of la Francophonie, annex XII.

B. Prohibitive regulations

99. Regulations must ban for-profit education and prohibit fee-based discrimination because it creates and entrenches social and economic inequalities.[76] Prohibitive regulations can ban the registration of private schools as companies, the recruitment of unqualified teachers or those employed in public schools, the closure of schools during an academic year, indulgence in false commercial propaganda to lure insufficiently informed students and parents,[77] the charging of capitation fees and the extraction from students or parents of any undeclared financial contribution over and above the approved fee. Regulations must prohibit school selection on the basis of ability, social or ethnic origin, or any form of psychometric tests.

C. Punitive regulations

100. According to one scholar, "the failure to enforce and monitor the regulatory framework within which private schools are to function has left the educational landscape open to corrupt practice and manipulation".[78] In addition to being prescriptive and prohibitive, the regulatory framework should also be punitive, including withdrawal of operating licences for lack of compliance with regulations. This is necessary to control non-compliance with regulations as well as to take action against private providers who indulge in fraudulent and corrupt practices, such as false declarations of profits or of salaries paid to teachers and tax evasion. It is important that corrupt and fraudulent practices are investigated, and operators and owners of schools who act illegally or abscond with student fees are prosecuted in the criminal system.[79]

XI. Oversight and monitoring mechanisms

101. The lack of effective oversight and regulating mechanisms is one of the most significant failures of States. In spite of regulations for registration and recognition, the rapid growth of unregistered low-fee private schools in the developing world shows that implementation gaps remain. The State has the responsibility to establish an oversight mechanism for private schools and must ensure its laws are being complied with.

102. The Special Rapporteur urges public authorities, parent-teacher associations, civil society groups and teachers' unions to closely monitor publicity and false claims that promote private providers in education. Public authorities should look into all cases of commercial advertising in education and take action in all cases of misleading claims as to quality education.

103. It is important that States carefully enforce laws, rules and regulations through monitoring and enforcement. Governments should strengthen national human rights mechanisms or ombudspersons to provide parents with a place to report suspected violations, and empower such bodies to investigate allegations.

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[76] See http://globalinitiative-escr.org/advocates-from-91-countries-call-on-governments-to-stop-education-profiteers/.

[77] See in particular www.right-to-education.org/news/un-special-rapporteur-urges-states-ban-all-commercial-advertising-and-marketing-schools#sthash.0ahWXwSW.dpuf.

[78] "Private schools for the poor", p. 54.

[79] Kenya highlighted that parents felt private schools could close down at any time because they existed merely on the "whim of an individual". See "The role and impact of private schools in developing countries", Day Ashley et al., "The role and impact of private schools", p. 27.

104. Parliamentarians have a crucial role to play in safeguarding the right to education by passing necessary legislation and, especially, by ensuring that for-profit education is outlawed, taking up questions related to enforcing laws, rules and regulations.

Monitoring privatization in education and United Nations human rights treaty bodies

105. The repercussions of privatization in education and the need for regulation is being increasingly recognized by the United Nations treaty bodies, notably the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights. Thus, in its concluding observations with respect to Morocco (CRC/C/MAR/CO/3-4), the Committee on the Rights of the Child expressed concern with the rapid expansion of private education, especially at the primary level, without the necessary supervision, leading to the reinforcement of inequalities in the enjoyment of the right to education. The Committee on Economic, Social and Cultural Rights has also sought information from Morocco about the development of private education and on the impact of privatization on education system (see E/C.12/MAR/Q/4).

106. The questioning of the privatization of education in Ghana by both the Committee on the Elimination of Discrimination against Women (see CEDAW/C/GHA/Q/6-7) and the Committee on the Rights of the Child (see CRC/C/GHA/Q/3-5) is a welcome development. In October 2014, the Committee on the Rights of the Child asked Ghana to provide detailed information on the reasons behind the increase in private education, which limits access to quality education for children who cannot afford private school tuitions (ibid.). The Committee on Economic, Social and Cultural Rights has asked the Government of Uganda to provide information on the impact of the growth of private education on the right to education of girls and children living in poverty (see E/C.12/UGA/Q/1).

107. The Special Rapporteur would like especially to urge the Human Rights Council that, in the context of the universal periodic review, noted that it is crucial to inquire about the negative impacts of privatization on the right to education in countries under review and measures taken by Governments to regulate private providers and safeguard education as a public good. State obligations for protecting right to education, particularly in the context of privatization, must be a central concern.

XII. Post-2015 development agenda

108. Education provided by private proprietors or enterprises is neither free nor equitable and the Special Rapporteur welcomes the proposal of the Open Working Group on Sustainable Development Goals to ensure, by 2030, that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, as well as to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all (see A/68/970 and Corr.1, goal 4 and target 4.1). The underlying obligation for States to realize the right to education, including through enhanced public investment in education as an essential prerequisite, must be emphasized.

109. In this respect, the Special Rapporteur refers with concern to the 2014 report on assessing progress in Africa towards the Millennium Development Goals,[80] which contains a recommendation to speed up private sector investment in education. This disrespects the proposal by the Open Working Group and undermines the right to education. The conclusions in the report that "Africa must build a vibrant private sector that supports the development of a dynamic primary education system ... establishing a liberal and attractive regulatory framework that is conducive to profitable returns on investment" overthrows States' responsibility for education as an essential public function. Ensuring free education of good quality for all is a core obligation of States, as established in, among others, the African Charter on Human and Peoples' Rights, which provides that every individual shall have the right to education. The Special Rapporteur therefore commends a joint statement by civil society organizations calling for the withdrawal of that report.[81]

110. Building an inclusive education system is a main thrust of the future development agenda and requires measures to curb privatization, which breeds exclusion and inequities and jeopardizes human development. Privatization impedes access to free basic education for the poor and marginalized; preventing this must be an overriding development concern, since education is a key instrument for ending poverty. The post-2015 development agenda should contain firm commitments by Governments to fostering social justice and equity and accordingly devise national implementation strategies for effectively regulating privatization in education.

XIII. Conclusions and recommendations

111. **Education is a fundamental human right and a core obligation of States. It is not a privilege of the rich and well-to-do, it is an inalienable right of every person. Principal responsibility for the direct provision of education lies with the State. However, education as a public function of States is being eroded by market-driven approaches and the rapid growth of private providers, with scant control by public authorities. Privatization negatively affects the right to education both as an entitlement and as empowerment. It breeds exclusion and marginalization, with crippling effects on the fundamental principle of equality of opportunity in education. It also entails disinvestment in public education.**

112. **Education benefits both the individual and the society and must be preserved as a public good; social interest in education must be protected against its commercialization. The corrosive impact of privatization on the right to education must receive foremost consideration in education laws and public policies. The commercialization of education should have no place in a country's education system.**

113. **Guided by principles of social justice and equity, as well as human rights law, regulating private providers is essential to mitigate the potentially deleterious and negative effects on students, education systems and societies. In this, Governments can be inspired by numerous decisions by courts and emerging jurisprudence.**

114. **Bearing in mind the issues highlighted in the present report, the Special Rapporteur would like to offer the recommendations below.**

[80] Available from www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/MDG_Report_2014_11_2014.pdf.

[81] Available from http://globalinitiative-escr.org/wp-content/uploads/2014/11/141127_Statement-privatisation-AfDB.pdf.

1. **Provision of education as the State's responsibility**

115. **The State remains primarily responsible for fulfilling the right to education on account of its international legal obligations. Governments should not allow low-fee private schools and should restore education as their essential public service function. The provision of basic education free of cost is not only a core obligation of the State, it is also a moral imperative. The State must discharge its responsibility as guarantor and regulator of education as a fundamental human right of every child.**

2. **Regulatory framework centred on education as a public good**

116. **States should put in place an elaborate framework of regulations that are prescriptive, prohibitory and punitive, in order to control private providers.**

117. **Prescriptive regulations clearly establish conditions under which private providers may be permitted to operate within a country, as well as minimum norms and standards with which schools must comply. In the absence of such regulations, unregistered schools may proliferate. Laws on education should spell out the duties and responsibilities of private providers vis-à-vis communities, students, teachers and societies at large.**

118. **Prohibitory regulations are necessary to outlaw and stop discriminatory practices, for-profit education and false commercial propaganda. Education is a public function and a social responsibility. No private provider should be allowed to establish for-profit education and aggrandize private interests to the detriment of public interest.**

119. **Punitive measures are necessary to ensure compliance with standards and the law. Sanctions must be applied when private providers perpetuate social injustices, while criminal proceedings are necessary for fraudulent and corruption practices.**

3. **Controlling abusive practices**

120. **Nationally designated authorities should undertake full-scale investigations of fraudulent practices, including tax evasion by private providers who reap profits in the name of education. States should ensure that the financial operations of all private providers are regularly scrutinized and that this information is publicly shared.**

121. **As noted in a recent study,[82] the UNESCO International Institute for Educational Planning should undertake a full-scale investigation of corruption in privatized education and of the fraudulent and corrupt practices of private providers.**

4. **Revitalizing and valorizing education as an essential public service**

122. **Learning from the devastating impact of structural adjustments on education as an essential public service, and in the face of the prevalent market ideology and surging privatization in education, States must expand educational opportunities, recognizing the paramount importance of public investment in education as their essential obligation. Under no circumstances should a State provide financial support to private providers of education or allow private companies to operate multiple schools.**

[82] Hallak and Poisson, "Corrupt schools, corrupt universities: what can be done?".

5. Engaging the community in expanding public educational opportunities

123. **When States alone cannot fully meet public demand for education, community schools should be encouraged, as they can play a meaningful complementary role. Public authorities should, therefore, engage with communities for the realization for the right to education. Similarly, the foundations of public utilities established for philanthropic motives should be encouraged to contribute to education as a public good.**

6. Preserving education as a public good and fostering the humanistic mission of education

124. **Public authorities should not allow the pursuit of material values to the detriment of a humanist mission of education or the propagation by private schools of a value system solely conducive to the market economy, with learning systems devoid of cultural diversity. States must ensure that the education imparted in private schools is in conformity with the objectives of education laid down in the Universal Declaration of Human Rights and in international human rights conventions.**

7. Reporting obligations of private providers

125. **Regulations should prescribe full financial and performance reporting requirements for all private schools. It should be obligatory for all private providers to report regularly to designated public authorities on their financial operations, in line with prescriptive regulations, covering matters such as school fees collected and salaries paid to teachers, and to declare, in a fully transparent manner, that they are not engaged in for-profit education.**

8. Strengthening human rights control mechanisms

126. **Governments should strengthen existing human rights mechanisms such as national human rights institutions and ombudspersons or create special mechanisms to regularly oversee operations of private providers. Such mechanisms should have *suo motto* investigatory power, with a mandate to look into alleged violations by private providers and any abusive practices. Recommendations made by such mechanisms should be implemented by Governments.**

9. Monitoring of privatization and human rights treaty bodies

127. **The Special Rapporteur would like to urge the United Nations human rights treaty bodies to give special consideration during their dialogues with States to the negative impacts of private providers and whether their operations are regulated and controlled in accordance with human rights law and internationally established frameworks of the right to education.**

10. Monitoring of privatization and universal periodic review

128. **The Special Rapporteur considers it important, in the context of the universal periodic review, to look at the negative effects of privatization on the right to education in countries under review and for Governments to regulate private providers and safeguard education as a public good. State obligations for respecting, protecting and fulfilling the right to education, particularly in the context of privatization, should be a priority concern in such reviews.**

11. Fostering the justiciability of the right to education and public interest litigation

129. As already stated by the Special Rapporteur, the right to education is justiciable and Governments can usefully draw upon jurisprudence in formulating laws, regulations and policies for regulating private providers (A/HRC/23/35). When State obligations are incorporated into national legal systems, defending the right to education vis-à-vis private providers becomes easier. Rules and regulations that govern private schools must be easily available, and avenues outside of costly court systems must be created to allow parents, communities and civil society to bring complaints to public authorities.

130. In order to defend the right to education vis-à-vis operations of private education providers, the State should facilitate and promote public interest litigation, by providing legal aid or by supporting civil society entities that provide such a role. The State should also support legal clinics in law schools that seek to research and enforce the right to education in courts as a cost-effective way of promoting public interest in education.

12. Engaging with parliamentarians

131. Parliamentarians, particularly members of education commissions or committees, play a key role in laying down regulatory frameworks for controlling private providers in education, as well as overseeing their implementation. Their advocacy for such a framework is very valuable. States should empower parliamentary committees to monitor private education providers, to ensure the right to education is fully respected, protected and fulfilled in the country.

13. Encouraging and supporting the role of intellectual community and civil society organizations

132. The Special Rapporteur calls upon civil society organizations and the intellectual community, as well as students, parents and community associations, to expose the negative effects of private providers in education. He encourages them to voice their concerns more strongly and widely as an essential function of the social compact for education in an endeavour to forge a global movement against the commercialization of education. Their advocacy work for fostering social justice and equity is valuable to counter market-based approaches in education. Research, events and expert consultations on the effects of privatization on the exercise and enjoyment of the right to education should be encouraged and supported.